It is generally said that to constitute double jeopardy the two offenses must be the same in law and fact. See *Commonwealth* v. *Roby*, 12 Pick. (Mass.) 496, 504. But the decisions differ as to when such identity exists. That both offenses arose out of the same transaction is not enough. *Morey* v. *Commonwealth*, 108 Mass. 433; *The King* v. *Barron*, [1914] 2 K. B. 570. If on trial of the first indictment the accused could lawfully have been convicted of the offense charged in the second, or *vice versa*, by the English rule, followed in many American jurisdictions, there is double jeopardy. *Spears* v. *People*, 220 Ill. 72, 77 N. E. 112; see *Regina* v. *Gilmore*, 15 Cox C. C. 85, 87; 2 EAST, PLEAS OF THE CROWN, 522. Thus, it is clear that if one crime is included in the other, or, *a fortiori*, if they are different degrees of the same offense, prosecution for either will be a defense to the other. *Grafton* v. *United States*, 206 U. S. 333; *Floyd* v. *State*, 80 Ark. 94, 96 S. W. 125. But if conviction for one of two offenses cannot be had under proof of the other, some states hold that there is not the requisite identity, even though the offenses arose out of the same transaction and have a common essential ingredient. *State* v. *Rose*, 89 Ohio St. 383, 106 N. E. 50; *State* v. *Patterson*, 66 Kan. 447, 71 Pac. 860. Other courts, however, under like circumstances, consider a common essential ingredient sufficient to cause jeopardy. *State* v. *Cooper*, 13 N. J. L. 361; *Herera* v. *State*, 35 Tex. App. 607, 34 S. W. 943. This view, followed in the principal case, seems sound. See 20 HARV. L. REV. 642.

CRIMINAL LAW — STATUTORY OFFENSES — REQUIREMENT OF *MENS REA* FOR A CRIME BASED ON POSSESSION. — A Mississippi statute provides that it shall be unlawful to possess liquor, and imposes a penalty of a fine or imprisonment, or both (1918 MISS. LAWS, c. 189, § 2). Liquor was found in the shop of the defendant. The jury found that the defendant did not own the liquor, and had no knowledge of the fact that it was in his shop. *Held*, the defendant should be acquitted. *City of Jackson* v. *Gordon*, 80 So. 785 (Miss.).

For certain statutory offenses, such as violations of police regulations, in their nature mere torts against the state, to a conviction of which no moral obloquy attaches, *mens rea* may well be considered unnecessary. *People* v. *Kibler*, 106 N. Y. 321, 12 N. E. 795; *Commonwealth* v. *Weiss*, 139 Pa. St. 247, 21 Atl. 10. But as to certain more serious offenses, particularly where the penalty is imprisonment, justice requires that the defendant be allowed all common-law defenses not expressly negatived by the legislators. *Sherras* v. *De Rutzen*, [1895] 1 Q. B. 918; *State* v. *Brown*, 188 Mo. App. 248, 175 S. W. 131; *State* v. *Cox*, 179 Pac. 575 (Ore.). The court in the principal case fails to note the distinction between these two classes of offenses but reaches the correct result by reading the word "knowingly" into the statute. The court intimates that the case might have been rested simply on the ground that one cannot possess that of which he has no knowledge. But specific knowledge is not essential to possession if there is a general intent to control that in which the chattel is included. *Ford* v. *State*, 85 Md. 465, 37 Atl. 172. See *South Staffordshire Water Co.* v. *Sharman*, [1896] 2 Q. B. 44, 47; HOLMES, THE COMMON LAW, 220. The principal case seems to indicate that the courts will be reluctant to hold a defendant guilty of any crime based on possession unless he has a more specific intent than is generally considered necessary to constitute possession for the purposes of civil rights and liabilities.

DAMAGES — EXEMPLARY DAMAGES — LIABILITY OF A CORPORATION FOR PUNITIVE DAMAGES FOR THE TORT OF AN AGENT. — In an action for personal injuries alleged to have been sustained by the plaintiff as the result of having been shoved from the platform of one of the defendant's street cars by the defendant's motorman, the court instructed the jury that if the acts of the motorman were done by him wilfully and without legal justification or excuse